

DOCKET FILE COPY ORIGINAL

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
MICHAEL J. LEHMKUHL *
SUZANNE C. SPINK *
RONALD G. LONDON *
MICHAEL H. SHACTER
* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI
L. L. P.

ATTORNEYS AT LAW
1776 K STREET, NORTHWEST, SUITE 200
WASHINGTON, D. C. 20006
(202) 296-0889

GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986

TELECOPIER (202) 296-5572
INTERNET PEP@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

FEB 6 - 1997

February 6, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554


Re: Amendment of Section 73.202(b),
FM Broadcast Stations
(Laramie, Wyoming)
MM Docket No. 96-255; RM-8960

Dear Mr. Caton:

Transmitted herewith on behalf of Rule Communications and Mount Rushmore Broadcasting, Inc. is an original and four copies of joint comments in the above-referenced proceeding.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


John F. Garziglia

Enclosure

No. of Copies rec'd CH 4
List ABOVE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 6 - 1997

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 96-255
FM Broadcast Stations) RM-8960
(Laramie, Wyoming))

To: Chief, Allocations Branch

COMMENTS

Rule Communications^{1/} and Mount Rushmore Broadcasting, Inc.^{2/}, by its attorneys, pursuant Notice of Proposed Rule Making, DA 96-2104, released December 20, 1996, hereby submit comments in support of an allotment of Channel 254A to Laramie, Wyoming, and an order stating that Mount Rushmore Broadcasting, Inc. amend its application to specify Channel 254A in lieu of Channel 244A while maintaining cut-off protection for the Mount Rushmore Broadcasting, Inc. application. In support thereof, the following is submitted:

1. Rule Communications and Mount Rushmore Broadcasting, Inc. hereby incorporate by reference their November 26, 1996 Petition for Rule Making filed in this proceeding. Mount Rushmore Broadcasting, Inc. restates that upon the allotment of

^{1/} Rule Communications is an applicant for FM Channel 244A at Laramie, Wyoming (FCC File No. BPH-960520MO), whose application is mutually exclusive with the application of Mount Rushmore Broadcasting, Inc. (FCC File No. BPH-960520MK).

^{2/} Mount Rushmore Broadcasting, Inc. is an applicant for FM Channel 244A at Laramie, Wyoming (FCC File No. BPH-960520MK) whose application is mutually exclusive with the application of Rule Communications (FCC File No. BPH-960520MO).

Channel 254A to Laramie, Wyoming and a reservation of that channel for the application of Mount Rushmore Broadcasting, Inc. with cut-off protection, Mount Rushmore Broadcasting, Inc. will promptly submit an appropriate amendment specifying the allotted channel for its proposed facility, and when authorized, construct a station promptly.

2. The public interest would be well served by the early initiation of service to Laramie from each applicant. There would be a reduction in the burdens on the Commission's processing and hearing resources by the elimination of the need for the designation for a hearing of the mutually exclusive applications and the subsequent hearing.^{3/}

3. In the event that an interest is expressed by any other party in providing additional service to Laramie, Wyoming, Channel 224A may be allotted to Laramie, Wyoming to accommodate such an interest. The allotment of such an additional channel is in the public interest in the event an expression of interest is filed in this proceeding for such an additional channel. See e.g. Modification of FM and Television Station Licenses, 98 FCC 2d 916, 920 (1984). Making the additional channel available would be fully in accord with the strictures of Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). As the Commission has noted in granting modification of licenses for existing stations to

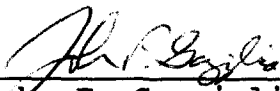
^{3/} In a now pending Joint Request for Approval of Settlement Agreement, Magic City Media, Inc. has agreed to dismiss its application for Channel 244A at Laramie, Wyoming (FCC File No. BPH-960520MJ) leaving Rule Communications and Mount Rushmore Broadcasting, Inc. as the two remaining applicants for Channel 244A at Laramie.

non-mutually exclusive channels, "the opportunity for filing for [an equivalent] channel is the only obligation [the Commission] must fulfill to comply with Ashbacker". See Helena, Montana, 50 RR 2d 70, 71 (1981).

WHEREFORE, for the reasons above, it is respectfully requested that Channel 254A be allotted to Laramie, Wyoming with a reservation of Channel 254A for the application of Mount Rushmore Broadcasting, Inc., which will leave the application of Rule Communications as a singleton on Channel 244A resolving the mutual exclusivity now existing on Channel 244A at Laramie, Wyoming.

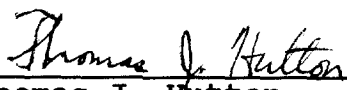
Respectfully submitted,

RULE COMMUNICATIONS

By: 
John F. Garziglia
Its Attorney

Pepper & Corazzini. L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

MOUNT RUSHMORE BROADCASTING, INC.

By: 
Thomas J. Hutton
It Attorney

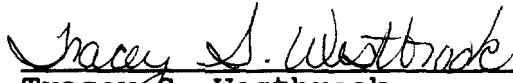
Dow Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20006
(202) 776-2738

February 6, 1997

CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of
Pepper & Corazzini, L.L.P., do hereby certify that a true copy of
the foregoing "Comments" were sent this 6th day of February, 1997
by hand delivery to the following:

Ms. Sharon P. McDonald
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
Fifth Floor
Washington, D.C. 20554



Tracey S. Westbrook